

Before the Board of Zoning Adjustment, D. C.

PUBLIC HEARING -- December 15, 1965

Appeal No. #8532 Northwest Washington Neighbors, Inc., Appellant

The Zoning Administrator District of Columbia, Appellee.

On motion duly made, seconded and unanimously carried, the following Order was entered December 22, 1965.

ORDERED:

The decision of the Zoning Administrator is upheld in the issuance of building permits on lots 820 thru 826 and lots 828, 829, and 830, Square 3177 for the erection of building located on Geranium Street and Blair Road, NW.

FACTS:

1. This appeal involves property which originally consisted of two lots in Square 3177 fronting on Blair Road at Geranium Street. Each original lot was occupied by a single family residence and are described as follows:

Lot 808 - 57.30 feet wide, 317.80 feet deep on the north side, 344 feet deep on the south side, with a 16 foot alley ending at the northwest corner, with a 15 foot alley running 165 feet along the south side at the west end of said lot line and zoned R-1-B, exhibit #10-A.

Lot 804 - 143.66 feet wide, 317.80 feet deep on the south side, 300 feet deep on Geranium Street which forms the north boundary and zoned R-2, exhibit #10-A.

2. The original houses were located as follows:

Lot 808 - set back from Blair Road an average depth of 38 feet and with a north side yard of 7.61 feet.

Lot 804 - set back from Blair Road at the front an average depth of 77 feet and set back from Geranium Street at the north side an average of 20 feet.

3. Blair Road is shown for widening on the permanent system of highway of the District of Columbia.

4. The property has been resubdivided into twelve new lots by deed description and now known as lots 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830 and 831, Square 3177, exhibit #10-B.

5. The two original houses, without being moved, are now located on new lots 827 and 831. The house on 831 having the same side yard of 7.61 feet as before the resubdivision.

6. Each new lot has a lot area sufficient to meet the lot area requirements of the zoning district in which it is located, exclusive of the pan handles described in finding, #7.

7. Lots 821, 822, 823 and 825 have 8 foot wide pan handle connections to Geranium Street while lot 826 has a 16 foot connection to Geranium Street. Lot 824 and 827 have 8 foot wide pan handle connections to Blair Road, and lot 827 has 101.15 feet of side yard abutting on Geranium Street.

8. The houses in the R-1-B zone have rear yards in excess of the required 25 feet and the houses in the R-2 zone have rear yards in excess of the required 20 feet.

9. All the houses have side yards of 8 feet or more except the original house on lot 831 and the new houses on lots 821, 828, 829 and 830. The later four lots being in the R-2 zone.

10. Although there are 5 contiguous pan handle driveway connections to Geranium Street, the developer is improving them with a common driveway protected by covenants.

11. Appellants allege that the Zoning Administrator erred in permitting the subdivision to proceed and by issuing building permits in violation of the Zoning Act and the Zoning Regulations as follows:

- a. Issuance of permits on lots not of record - Section 8103.3.
- b. Intent of Act of Congress, 1938.
- c. Interpretation and application of the regulations - Section 1301 and the Act of Congress on which this regulation is based.
- e. Buildings on alley lots - Section 7507.

12. The Zoning Administrator was present at the hearing to answer questions and explain his interpretations.

OPINION:

Prior to the specific discussion and opinion on each of the specific points, we believe it is necessary to have an understanding of the case to repeat and point out that building permits were issued to erect dwellings detached, and dwellings, one family semi-detached. Each is located upon a parcel of land which has frontage on an existing, dedicated, and publicly maintained street; each parcel meets the minimum area requirements of the district in which it is located; and each complies with all yard, height, and area requirements. It is further necessary to recognize the particular definition of "Dwelling one family semi-detached."

The following definition appears in Section 1202. (Page 3)

"Dwelling, one family semi-detached: a one-family dwelling, the wall on one side of which is either a party wall, or a lot line wall, having one side yard."

This definition apparently permits the construction of the traditional semi-detached structure where two dwelling units are simultaneously erected using a party wall or it permits the erection of a single unit if one wall is placed on the lot line.

With the above as background material the BZA makes the following disposition of the five items appealed from the decision of the Zoning Administrator:

1. Side yard -- Section 3305

This section specifies the requirements to side yards in all the residential districts. The subject property is situated in the R-1-B and R-2 Districts. The applicable provisions in the R-1-B and the R-2 Districts is that the "minimum width of each side yard -- 8 feet." However, four of the houses may be considered one family semi-detached and thus need only one side yard. The original house on new lot 831 has a side yard of only 7.61 feet -- being the same as before the resubdivision and in effect the continuation of a nonconforming side yard.

2. Issuance of permits on lots not of record - Section 8103.3.

Section 8103.3 reads as follows:

Hereafter, except as provided in Section 7516 and the Act of Congress of June 28, 1898 (30 Stat. 520, Chapter 519, Section 5), a building permit shall not be issued for the proposed erection, construction or conversion of any principal structure, or for an addition to any such structure, unless the land therefor has been subdivided so that each structure shall be on a separate lot of record. Any combination of commercial occupancies separated in their entirety, erected or maintained in single ownership, shall be considered as one structure. (1/15/64)

Read without further reference to the exception the subsection would convey that no permit for the erection of a building can be issued unless the land has been subdivided so that each structure shall be on a separate lot of record. This provision if it were to be satisfied by the submission of a subdivision plat to the Surveyor's Office would entail compliance with the subdivision regulations and the request of Section III a, which states:

"The size, shape and orientation of lots shall be appropriate for the location of the proposed subdivision . . . "

The effect of Section 7516 is to place no limit on the number of principal buildings on a single lot provided the applicant for a permit submits satisfactory evidence that all bulk use, and open space requests have been met.

The Board finds that the applicant has submitted satisfactory evidence that these requests are being complied with.

The balance of the exception stated in 8103.3 has to do with whether the District of Columbia can require the submission of a subdivision plat. These exceptions are complicated by the Act of Congress of June 28, 1898,

etc. and the references made therein to the Permanent System of Highways, and the ramifications of that instrument. Rather than to become involved in the intricacies of that matter the Board relies on the statement of the incumbent Surveyor of the District and his memorandum included in the record of this proceeding, Exhibit #9, to wit: the District cannot compel the submission of a plat in this case.

3. Intent of Act of Congress, 1938

The Act of Congress dated June 28, 1938, is enabling legislation providing the authority needed to promulgate and enforce Zoning Regulations. It amends the first zoning enabling legislation provided by Act of 1920, and was itself again amended in 1942.

The Act contains general language of purpose i. e. "to regulate the location, height, bulk, number of stairs and size of building and other structures, the percentage of lot which may be occupied, the sizes of yards, courts, and other open spaces." It contains the phrases, "such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets, to secure safety from fire panic, and other dangers, to promote health and the general welfare, to provide adequate light and air . . . etc." No representation has been made that the Zoning Regulations or their administrator do not strive to attain these ends, opinions of reasonable men may differ as to what degree of perfection is attainable, and what requirements must be contained in order that a respectable effort has been made to achieve the objective. These are difficult matters to measure at best, two points are worthy of note in trying to see what guides can be used:

- a. It is stated within the Act that the regulations made under authority of the 1920 Act (i. e. the 1922 Zoning Regulations) shall be deemed to have been made in accordance with this Act. The Lewis Plan of 1958 was considerably more sophisticated than the 1922 Regulations, and enforcement has likewise improved. We deduce from this that since the Congress was willing to accept the 1922 Zoning Regulations as satisfying the Act of 1938, it would surely accept the 1958 Lewis Plan as complying with the intent of Congress.
- b. Words and phrases such as "lessen congestion in the street, promote health and general welfare, provide adequate light and air, prevent the undue concentration population" now appear in all or nearly all of the Zoning enabling laws of the 50 states, they are certainly not without meaning, yet the Congress itself was not sufficiently satisfied, that the phrase "lessen congestion in the street" was ample authority to authorize the inclusion of off-street parking requirements in the Zoning Regulations for the District. In spite of the already existing phrase "to lessen congestion in the street," in 1942 the Act was amended by the Congress to insert language which states "The said Zoning Commission shall also have

power . . . to require . . . that facilities be provided . . . for the parking of automobiles . . ." By comparison such phrases as "provide adequate light and air" have been met by the Lewis Plan. In the Board's opinion there has been no failure to comply with the intent of the Act of 1938 though obviously still higher standards would also comply and might be quite desirable.

4. Interpretation and Application of Regulation - Section 1301 - (also Act of Congress on which this Regulation is based).

Section 1301 appears on Page 6 and 7 of the Zoning Regulations. It states among other things that "these regulations shall be held to be the minimum requirements for the promotion of the public health, safety, morals, convenience, order . . . etc." It then repeats the particular phrases of the 1938 enabling Act such as to provide adequate light and air, to prevent undue concentration of population etc. It states quite clearly that the standard specified herein are the minimum requirements, by logic it could - certainly be inferred that any lesser standards would not meet the requirements, and also that higher standards might be quite desirable.

The Board's opinion the requirements of the Zoning Regulations have been met, and the issuance of a permit by the Zoning Administrator was in order. The Board is also of the opinion that the discussion of the intent and interpretation of the Act of Congress previously made is equally applicable in item 4.

5. Building on Alley Lots - Section 7507.

This section clearly states that no structures except a one family dwelling may be erected on an alley lot. This might seem to imply the one family dwelling is limited to a one family detached rather than a one family semi-detached, or that the stem of the pipestem lots itself constitutes an alley.

The definition Section 1202, Page 4 of lot, alley: "a lot facing or abutting an alley and at no point facing or abutting a street."

Although an alley exists adjoining the south boundary of the subject premises, it is also contiguous to Geranium Street and Blair Road, both streets are included in the system of permanent highways of the District of Columbia and are publicly maintained by its highway department.

In the Board's opinion the subject property is not an alley lot and hence none of the provisions of Section 7507 apply. The Board is also of the opinion that the eight foot pan handles on many of the lots terminating in street frontage, are themselves part of the lot and do not constitute an alley.

The Board is therefore of the opinion that the Zoning Administrator was not in error in issuing building permits for structures located near - Geranium Street and Blair Road -- more specifically described in the forepart of this order.

In this action of the Board upholding the Zoning Administrator's interpretation of the Regulations as correct, the Board does not wish to convey the impression that the regulations themselves are incapable of improvement. Specifically, the absence of minimum street frontage requirements has allowed the use of 8 foot wide strips to satisfy requirements of street frontage. This is considered by the Board to be inadequate under many circumstances. We would urge that the Zoning Commission consider an amendment to the Zoning Regulations that would specify a minimum frontage which would be more realistic, such as, 16 feet which was used for many years.

The Board also believes that the definition of a dwelling, one family semi-detached, could be clarified by deleting the reference to a lot line wall. If this were done, future construction of semi-detached housing could only be done if the two units were erected simultaneously.